

REMARKS

The present Amendment is in response to the Official Action dated July 19, 2007. Claims 1, 5, 11, 14, 20, 23, 27-29, 33, 36, and 42 have been amended. Claims 4, 12, and 13 have been cancelled. Claims 8-10 and 41 were previously cancelled. Claims 43-45 have been added. Therefore, claims 1-3, 5-7, 11, 14-40, and 42-45 remain pending in the present application. Applicants' remarks relating to the pending claims and the outstanding Action are set forth below.

In the Action, the Examiner first acknowledged that previously withdrawn claims 6, 7, 16, 18, 19, 25, and 30-32 are readable on the elected species depicted in Figure 1 and have therefore been treated on the merits in the Action. Further, the Examiner objected to claim 7 as being dependent upon a rejected base claim, but otherwise allowable if rewritten into independent form including all of the limitations of the base claim and any intervening claims. Per the Examiner's suggestion, claim 7 has been rewritten in independent form as new claim 43 and includes all limitations of claim 7, as well as those of claims 5 and 6 from which claim 7 properly depends.

Further in the Action, the Examiner rejected claims 1-6, 11-37, 39, 40, and 42 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,749,876 to Duvillier *et al.* ("Duvillier"), and claim 38 under 35 U.S.C. § 103(a) as being unpatentable as obvious in view of Duvillier. In short, it is the Examiner's position that each and every one of the elements of rejected claims 1-6, 11-40, and 42 is either anticipated or obviated in view of the prior art noted above.

Claim 1 of the present application recites a bone graft forming guide comprising a main body, a hole guide, and a cutting guide. The above-amendment to claim 1 makes clear that the main body includes first and second portions that define an

interior. Thus, graft material may be placed into the interior of the embodiment of claim 1.

The Examiner rejected claim 1 citing Duvillier as having a main body comprised of elements 14, 21, 24, and 61. Column 7, lines 61-65 of Duvillier state that "[b]y pivoting the flanges forward or backward, the blocks are thus displaced vertically . . . between a position in which the three blocks are spaced apart to the maximum, and a position in which they are against one another." Element 61 of Duvillier is comprised of flanges 62. Column 12, lines 38-43 of Duvillier state that "[t]he support element 14 is then put into place, bearing on the femoral condyles 13, by engaging on the rod 28 the guide 12 for the femoral cutting blades which is fixed to the support element 14, with which it is adjustable in height, until the plane of the coplanar faces of the blocks comes into contact with the condylar end." This language makes clear that the "main body" of Duvillier *abuts*, rather than *encloses*, the bone to be resected. The above-amendment to claim 1 distinguishes the embodiment of claim 1 of the present application from Duvillier in that the embodiment of claim 1 *encloses* a bone graft. Therefore, Applicants submit that claim 1, as amended, is distinguished from Duvillier and is in condition for allowance. Given that dependent claims 2 and 3 properly depend from claim 1 (or an intervening claim), such also constitute allowable subject matter.

Claim 5 of the present application recites a bone graft forming guide comprising a main body, a hole guide insert, and a cutting guide insert. The above-amendment to claim 5 makes clear that the hole guide insert and the cutting guide insert are interchangeable. Paragraph [0044] of the present application states that "the step of cutting the bone graft is preferably preceded, but may be followed, by forming a plurality of holes in a graft material," which begins "by first inserting

a hole guide insert in the insert-receiving opening in the main body . . ." Paragraph [0045] then states that "after a plurality of holes have been formed in the graft material, the hole guide insert may be removed from the opening in the main body, and a cutting guide insert may be placed in the opening." Thus, it is clear that the cutting guide insert and the hole guide insert are interchangeable, each of which may be received in the receiving structure.

It is the Examiner's contention that Duvillier includes a hole guide insert as element 46 and a cutting guide insert as element 30. Column 7, lines 9-11 state that "[t]he plate 46 is designed to rest on the upper face of the block 30, the axial orifice 47 [of the plate 46] then being centered in relation to the bore 44 of the block 30." This language makes clear that elements 46 and 30 of Duvillier are not interchangeable, but rather one is designed to be positioned with respect to the other. Therefore, the above-amendment of claim 5, making clear that the cutting guide insert and the hole guide insert are interchangeable, distinguishes the embodiment of claim 5 from Duvillier. Applicants, therefore, submit that claim 5, as amended, is distinguished from Duvillier and is in condition for allowance. Claims 44 and 45 have been added and each depends from claim 5 (or an intervening claim). The subject matter of these claims is fully supported by the originally filed specification, and therefore, presentation of either claim does not constitute new matter. Given that dependent claims 6, 7, 44, and 45 properly depend upon claim 5 (or an intervening claim), such also constitute allowable subject matter.

Similar amendments to the above-discussed amendments of claim 1 have been made to claims 11 and 27. Further, claims 14, 20, 23, 28, 29, 33, and 36 have been amended for clarity. Therefore, in support of the above-amendments to claims 11 and

27, Applicants rely on the above-remarks regarding claim 1 and submit that claims 11 and 27, as amended, are distinguished from Duvillier and are in condition for allowance. Applicants also note that claims 11 and 27 include other or different limitations not taught by Duvillier. However, in light of the above discussion relating to claim 1, Applicants respectfully assert that there is no need to specifically discuss these other/different limitations. Given that dependent claims 14-26 properly depend from claim 11 (or an intervening claim) and that dependent claims 27-40 properly depend from claim 27 (or an intervening claim), such also constitute allowable subject matter.

Claim 42 has been amended so that said "means for holding" now reads "means for holding and enclosing." Applicants further rely on the above-remarks regarding claim 1 and submit that claim 42, as amended, is distinguished from Duvillier and is in condition for allowance.

In light of all of the above, Applicants respectfully submit that each and every one of the currently pending claims are allowable over the prior art of record. As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

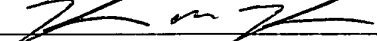
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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